

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	
	:	CRIMINAL ACTION
	:	
v.	:	
	:	
DEMITRIUS THOMPSON	:	No. 02-303

MEMORANDUM AND ORDER

Schiller, J.

June 23, 2003

Presently before the Court is the Government's motion for reconsideration of the Court's Order granting in part Defendant Demitrius Thompson's motion to suppress. For the reasons set forth below, I deny the Government's motion for reconsideration.

Defendant Demitrius Thompson is charged with possession with the intent to distribute more than fifty grams of cocaine base ("crack") in violation of 21 U.S.C. § 841(a)(1), possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A), and possession of a firearm in or affecting interstate commerce by a convicted felon in violation of 18 U.S.C. § 922(g)(1). In his motion, Defendant sought to suppress the following physical evidence: (1) one clear sandwich bag of alleged cocaine base; (2) one clear plastic bag with seven clear zip lock packets of alleged marijuana; (3) one brown wrapped smoked "blunt"; (4) one black semi-automatic pistol with one black metal magazine loaded with twelve live rounds; (5) one black digital scale; (6) one plastic sandwich bag with four smaller bags, one straw with white powder, and two razor blades; and (7) \$105.00 in U.S. currency. Additionally, Defendant sought to suppress a statement that was allegedly made to the police officers that arrested him.

A suppression hearing was held on May 27, 2003. The Government called Officer Timothy Wade, one of the arresting officers, to testify regarding the arrest and search of Defendant

Thompson. Officer Wade testified that on December 18, 1998, while investigating narcotic sales in the 6100 block of Yocum Street of Philadelphia, he observed and smelled the “heavy odor of marijuana coming from a gold 1988 Nissan station wagon” where Defendant Thompson was seated in the driver’s seat. (May 27, 2003 Tr. at 3-4.) Officer Wade stated that he then walked up to the car, observed Defendant smoking a brown marijuana blunt, and identified himself as a police officer. (*Id.* at 4-5.) Officer Wade recalled that after he asked Defendant to step out of the car, Defendant responded, “I’m only waiting for my cousin and smoking a little weed.” (*Id.* at 6.) Officer Wade explained that after asking Defendant twice to step out of the car, Defendant exited the car and handed Officer Wade the marijuana blunt. Officer Wade stated that he placed Defendant under arrest, patted him down, and found a semiautomatic handgun in his waistband. (*Id.*)

Officer Wade testified that at the time of arrest, Defendant was wearing jeans and a “puffy” winter jacket. (*Id.* at 8.) Officer Wade stated that before placing Defendant in the police car, Officer Wade searched Defendant fully and retrieved from one of the inside pockets of Defendant’s jacket a large white chunk of alleged crack cocaine and seven plastic packets of green weed and seed substances alleged to be marijuana. Officer Wade testified that from the other inside pocket of Defendant’s jacket, he retrieved a small digital scale, numerous small unused plastic packets, and razor blades. (*Id.* at 8, 14.) Additionally, Officer Wade testified that \$105.00 dollars of U.S. currency was retrieved from Defendant’s pants pocket. (*Id.* at 8.) When questioned on cross-examination regarding the existence of the inside pockets of Defendant’s jacket, Officer Wade emphatically stated that there were inside pockets in Defendant’s jacket and that he retrieved the drugs and paraphernalia from these pockets. (*Id.* at 20.)

Defense counsel called Gwendolyn Thompson, Defendant’s mother and a twenty-three year

employee of the United States Postal Service, who testified that shortly after Defendant was arrested, she retrieved the jacket that he was wearing at the time of his arrest from the Philadelphia County Prison System. (*Id.* at 29, 34.) She also testified that she has kept the jacket in her possession since 1998 when Defendant was arrested. (*Id.*) She showed the jacket to the Court and indicated that the jacket did not have inside pockets. (*Id.* at 30.) Defense counsel also pointed out to the Court that although biographical information – which generally includes, for example, the clothing and identifiable characteristics of a defendant – is usually taken at the time of arrest, there were no biographical documents produced in discovery that would have inventoried Defendant’s clothing at the time of his arrest. (*Id.* at 45.)

After considering the evidence and the arguments by counsel, the Court granted in part and denied in part Defendant’s motion to suppress. The Court found the testimony of Officer Wade to be credible regarding the “plain smell” and “plain view” of marijuana and the initial search that yielded the firearm on Defendant, but did not find Officer Wade’s testimony regarding the inside pockets credible in light of Ms. Thompson’s contradictory testimony. Thus, the Court granted Defendant’s motion as to the drugs and paraphernalia that were allegedly found in the inside pockets and denied the motion as to the firearm. (*Id.* at 47-46.)

Asserting that the ruling results in manifest injustice, the Government now moves the Court to reconsider its ruling regarding the suppression of the drugs and paraphernalia. “The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence.” *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985) (citing *Keene Corp. v. Int’l Fid. Ins. Co.*, 561 F. Supp. 656, 665 (N.D. Ill. 1983)). For a motion to suppress, “[a]s a general rule, the burden of proof is on the defendant who seeks to suppress evidence.” *United*

States v. Johnson, 63 F.3d 242, 245 (3d Cir. 1995) (citing *United States v. Acosta*, 965 F.2d 1248, 1256 n.9 (3d Cir. 1992)). “However, once the defendant has established a basis for his motion, i.e., the search or seizure was conducted without a warrant, the burden shifts to the government to show that the search or seizure was reasonable.” *Id.*; see also *United States v. Welles*, Crim. A. No. 96-416-3, 1998 WL 31676, at *2, 1998 U.S. Dist. LEXIS 159, at *5 (E.D. Pa. Jan. 6, 1998) (citing same), *aff’d without opinion*, 182 F.3d 905 (3d Cir. 1999); *United States v. Ayers*, Crim. A. No. 00-60, 2001 U.S. Dist. LEXIS 6130, at *3-4 (D. Del. May 10, 2001) (holding that “[w]here the arrest was made without a warrant . . . the burden shifts to the Government to demonstrate that the warrantless search was conducted pursuant to one of the exceptions to the warrant requirement (citing *United States v. Herrold*, 962 F.2d 1131, 1137 (3d Cir. 1992)). This burden is no greater than a burden by a preponderance of the evidence. See *United States v. Matlock*, 415 U.S. 164, 178 n.14 (1974). In assessing whether the Government has met its burden on a motion to suppress, a trial court must determine “‘the credibility of the witnesses and the weight to be given the evidence, together with the inferences, deductions and conclusions to be drawn from the evidence.’” *United States v. Scarfo*, 180 F. Supp. 2d 572, 577 (D.N.J. 2001) (citations omitted); see also *Government of the Virgin Islands v. Gereau*, 502 F.2d 914, 921 (3d Cir. 1974) (holding that district court’s credibility determinations on motion to suppress are not subject to appellate review).

In the present case, there is no question that the search and seizure at issue were accomplished without a warrant. Accordingly, the burden shifted to the Government to show that the search and seizure were reasonable. While I found Officer Wade’s testimony regarding the circumstances of Defendant’s arrest and initial search that yielded the firearm on Defendant’s waistband to be credible, I could not ignore the testimony of Ms. Thompson, a twenty-three year

employee of the United States Postal Service, in making my determination regarding whether it was credible that Officer Wade found the drugs and paraphernalia in the inside pockets of Defendant's jacket. While the Government argues that the jacket presented at the hearing may not be the one worn at the time of arrest, this argument is difficult to accept because no biographical information taken at the time of arrest was produced in discovery. Such information could have confirmed whether the jacket presented at the hearing was in fact the jacket worn at the time of arrest. Although Officer Wade was emphatic that he found the drugs and paraphernalia in the inside pockets of Defendant's jacket and not some other location on Defendant's person, Ms. Thompson's testimony about retrieving her son's jacket from the Philadelphia Prison System was entirely credible and it was clear that the jacket had no inside pockets. As such, I found that the drugs and paraphernalia were not found in the inside pockets of Defendant's jacket pursuant to a search incident to arrest, and as the government did not present further evidence on the issue, it failed to meet its burden demonstrating that it recovered the items in a reasonable manner. Thus, there is no reason to alter my prior ruling.

It is necessary, however, to clarify my ruling of May 27, 2003. While the drugs and paraphernalia were suppressed, the blunt, the firearm, and the statement made by Defendant were not suppressed. I found Officer Wade's testimony about the blunt and firearm to be credible, and thus, these items were properly seized pursuant to a lawful arrest based on probable cause. *See United States v. Chadwick*, 433 U.S. 1, 14-15 (1977). Similarly, Officer Wade's testimony regarding the spontaneous and voluntary nature of Defendant's statement was credible, and thus, suppression of the statement is not warranted under *Miranda v. Arizona*, 384 U.S. 436 (1966). Therefore, the Government's motion for reconsideration is denied and my prior ruling granting in part and denying in part Defendant's motion to suppress will stand. An appropriate Order follows.

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ORDER

AND NOW, this **23rd** day of **June, 2003**, upon consideration of the Government's motion for reconsideration, and for the foregoing reasons, it is hereby **ORDERED** that:

The Government's Motion for Reconsideration (Document No. 33) is **DENIED**.

BY THE COURT:

Berle M. Schiller, J.